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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
SRIVASTAVA, VIVEK	
ART UNIT	**PAPER NUMBER**
2611	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/780,177	HOOBERMAN, JAMES D.	
	Examiner	Art Unit	
	Wesley Stiles	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 February 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02/09/01* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: reference numbers should immediately follow the name of the item to which they reference. Lines 21-22 of page 2 include the phrase "A user then accesses a web page or screen associated with the present invention 14". To avoid confusion, the phrase should read similar to the following, "A user then accesses a web page 14 or screen associated with the present invention."

2. In addition, the examiner does not understand the meaning of the statement found on page 3, lines 16-18 which reads: "The soundtrack selected by a user being accessed directly from the Web site or alternatively downloaded and stored on the user network access device memory." The statement must be rephrased to avoid confusion.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claims 8 and 9 recite the limitation "said auditory alarm signal". Claim 10 is rejected on the same basis, as all dependent claims inherently contain each limitation of their parent claims. There is insufficient antecedent basis for the limitation in these claims.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claim 7 is rejected under 35 U.S.C. 102(e) as being anticipated by Treyz (US 6,678,215). Treyz discloses a network-based program (column 2, lines 36-53) which creates an auditory alarm signal at a user location in response to an input of an activation time (column 5, lines 62-67). All limitations of this claim are met by the system of Treyz.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1, 2-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz (US 6,678,215) in view of Schulz (US 3,576,185). Regarding claim 1, Treyz discloses a network-based program that produces sounds for the user (column 2, lines 36-53). Treyz does not disclose, however, the inclusion of sleep-inducing sounds as media available to the user.

10. In analogous art, Schulz teaches the use of low frequency sounds to help induce sleep in the user (column 4, lines 24-27).

11. At the time of the invention, it would have been obvious to one of ordinary skill in the art to generate sleep-inducing tones as taught by Schulz and present them to the user via the network-based program of Treyz. The motivation for doing so would have been to allow the user to conveniently use the same audio player used for other media playback to assist them in falling asleep. Also, allowing the sleep-inducing sound creation device to be connected to the internet would allow the user to access the program on the computer when away from home without traveling with a separate sleep-

inducing appliance. Therefore, it would have been obvious to combine the net-based audio system of Treyz with the sleep-inducing sound system of Schulz to produce a convenient, portable solution to insomnia.

12. Regarding claim 3, the combination of Treyz and Schulz teach all limitations of the claim as discussed for claim 1 above, wherein Treyz discloses that the program is linked to a web site (column 5, lines 23-35).

13. Regarding claim 4, the combination of Treyz and Schulz teach all limitations of the claim as discussed for claim 1 above, wherein Treyz discloses a sound controller, specifically play duration (column 5, line 60 to column 6, line 1).

14. Regarding claim 6, the combination of Treyz and Schulz teach all limitations of the claim as discussed for claim 1 above, wherein Treyz discloses an alarm clock routing (column 2, lines 54-64).

15. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz and Schulz in view of information disclosed in the specification of the current application. The combination of Treyz and Schulz teach a network-based program that produces sleep-inducing tones (as stated above) but do not teach those tones to be between 3 and 30 Hz. Instead, Schulz teaches tones from 40-80 Hz.

16. The disclosure states: "Oscillatory sounds in the frequency range given and preferably between 5 and 15 Hz are well known to induce relaxation and somnolence." See page 3 of specification.

17. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use tones of 3-30 Hz produced through the network-based program of Treyz and Schulz to induce sleep in the user. The combination of Treyz and Schulz teaches the use of 40-80 Hz signals to induce sleep, but since signals of 5-15 Hz are "well known to induce relaxation", it would have been obvious to alter the combination of Treyz and Schulz to produce the lower frequency tones in the range of 3-30 Hz with a goal of maximizing relaxation of the user.

18. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz in view of Schulz in further view of Adatia (US 2003/0112262). The combination of Treyz and Schulz teaches a network-based program which provides sleep inducing sounds to the user (see claim 1 rejection above). This

combination does not teach, however, the ability of the program to provide a visual stream to the user that changes in concert with the produced sound.

19. In analogous art, Adatia teaches a net-based audio producing program (downloads file, audio, and visual information from the internet, paragraph 78) which comprises a visual stream that changes in concert with the sound. Paragraph 34 of Adatia teaches a "moving graphic that is preferably related to the music being played."

20. At the time of the invention, it would have been obvious to one of ordinary skill in the art to include sleep-inducing tones in the collection of media played through the system of Adatia. The motivation for doing this would have been to allow the user to schedule and listen to low frequency tones help him or her fall asleep, all conveniently in the same interface which could also be used to awaken them in the morning and to play media throughout the day. In addition to the tones, it would be beneficial to the user to have calming visual effects to aid their relaxation. Therefore, it would have been obvious to include sleep-inducing tones in the media available to the user through the management system of Adatia, and to present those tones to the user in a combined audio-visual display.

21. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz in view of Nohara (US 5,699,323). For the purposes of these rejections, the examiner has assumed that claims 8-10 are dependent upon claim 7, not claim 6 as disclosed.

22. Regarding claim 8, Treyz discloses all limitations as discussed for claim 7 above, except for the auditory alarm signal being a television broadcast.

23. In analogous art, Nohara discloses a system that turns on a television broadcast as the alarm clock to awaken a user. See column 1, lines 15-20.

24. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the timer system of Nohara in conjunction with the net-based alarm clock program of Treyz. The motivation for doing so would have been to allow the user to awaken to audio and visual stimuli, instead of purely audible stimuli. This would not only allow the user to view their favorite television program upon awakening, but it would facilitate the awakening process. Therefore, it would have

been obvious to use the net-based program of Treyz to control the electronic device activation system of Nohara in order to set an audible television broadcast to awake the user.

25. Regarding claim 9, the combination of Treyz and Nohara teach all of the limitations of the claim as disclosed for claim 7 above, wherein Nohara teaches that the device may also be applied to preselected video devices, such as a VCR, instead of live television broadcasts (column 7, lines 18-20).

26. Regarding claim 10, the combination of Treyz and Nohara teach all of the limitations of the claim as disclosed for claim 7 above, wherein Nohara teaches that the device may also be applied to activate a video source such as a VCR (column 7, lines 18-20).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wesley Stiles whose telephone number is (703) 308-6107. The examiner can normally be reached on 7:00-4:30, out of the office on alternating Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on (703) 305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WLS
8/24/04

VIVEK SRIVASTAVA
PRIMARY EXAMINER